

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA**

In re: Genentech, Inc., Herceptin
(Trastuzumab) Marketing and Sales
Practices Litigation

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MDL Docket No. 16-MD-2700
Document Relates to:
All Cases

**PLAINTIFFS' SECOND MOTION TO COMPEL PRODUCTION OF DOCUMENTS
IMPROPERLY WITHHELD AS PRIVILEGED**

Pursuant to the Court's Minute Order entered on February 20, 2018 (Dkt. # 332) and for the reasons set forth in Plaintiffs' prior Motion to Compel (Dkt. # 286) and the Court's Order on that Motion (Dkt. # 322), Plaintiffs move to compel production, in full, of the documents identified on Exhibits 1 and 2 to this Motion.

Based on assertions of privilege, Genentech withheld the challenged documents (and others) from Production Nos. 37, 39, 45, 54, and 59 and listed the documents on the privilege logs attached as Exhibits 3 through 7 to this Motion. The parties have met and conferred extensively on this issue. As a result of this process, Genentech withdrew its privilege assertions as to many of the challenged documents. Genentech continued to maintain its claim of privilege as to some of the documents, and in some instances, produced the documents to Plaintiffs in redacted form. After reviewing the redacted documents, Plaintiffs continue to challenge Genentech's assertions of privilege as to some of the redactions.

Consistent with Plaintiffs' prior Motion to Compel (Dkt. # 286), which is incorporated herein, the challenged documents fall into two categories: (1) documents that do not contain or reflect an attorney-client communication (Exhibit 1); and (2) documents that do not reflect communications between attorney and client that were made for the primary purpose of seeking

or rendering legal advice (Exhibit 2). For the reasons set forth in the prior Motion and in the Court's Order on that Motion (Dkt. # 322), Plaintiffs ask that the Court review the challenged documents *in camera* and order production of those documents that the Court finds are not protected from disclosure by the attorney-client privilege.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of March, 2018, I electronically transmitted the foregoing document to the Clerk of the Court using the CM/ECF System for filing as required in the Court's Practice and Procedure Order (MDL Doc. #6 at ¶ 5).

/s/ David E. Keglovits